

107TH CONGRESS  
1ST SESSION

# S. 127

To give American companies, American workers, and American ports the opportunity to compete in the United States cruise market.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2001

Mr. MCCAIN (for himself, Mr. CLELAND, Mrs. HUTCHISON, and Mr. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MAY —, 2001

Reported by Mr. MCCAIN, without amendment

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## A BILL

To give American companies, American workers, and American ports the opportunity to compete in the United States cruise market.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF SECTIONS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “United States Cruise Vessel Act”.

6 (b) TABLE OF SECTIONS.—The table of sections for  
7 this Act is as follows:

Sec. 1. Short title; table of sections.

Sec. 2. Definitions.

Title I—Operations under Certificate of Documentation

- Sec. 101. Domestic cruise vessel.
- Sec. 102. Repairs requirement.
- Sec. 103. Construction requirement.
- Sec. 104. Certain operations prohibited.
- Sec. 105. Priorities within domestic markets.
- Sec. 106. Report.
- Sec. 107. Enforcement

Title II—Other Provisions

- Sec. 201. Application with Jones Act and other Acts.
- Sec. 202. Glacier Bay and other National Park Service area permits.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) ELIGIBLE CRUISE VESSEL.—The term “eli-  
4 gible cruise vessel” means a cruise vessel that—

5 (A) was delivered after January 1, 1980;

6 (B) is at least 20,000 gross registered  
7 tons;

8 (C) has no fewer than 800 passenger  
9 berths;

10 (D) is owned by a person that is a citizen  
11 of the United States for the purpose of oper-  
12 ating a vessel in the coastwise trade within the  
13 meaning of section 2 of the Shipping Act, 1916  
14 (46 U.S.C. 802) or section 12106(e) of title 46,  
15 United States Code;

16 (E) provides a full range of overnight ac-  
17 commodations, entertainment, dining, and other  
18 services for its passengers;

19 (F) has a fixed smoke detection and sprin-  
20 kler system installed throughout the accommo-

1            dation and service spaces, or will have such a  
2            system installed within the time period required  
3            by the 1992 Amendments to the Safety of Life  
4            at Sea Convention of 1974; and

5            (G) meets the eligibility requirements for a  
6            certificate of inspection under section 1137(a)  
7            of the Coast Guard Authorization Act of 1996  
8            (46 U.S.C. App. 1187 nt.), and complies with  
9            the applicable international agreements and as-  
10          sociated guidelines referred to in section  
11          1137(a)(2) of that Act (46 U.S.C. 1187 nt.).

12          (2) ITINERARY.—The term “itinerary” means  
13          the route travelled by a cruise vessel on a single voy-  
14          age that begins at the first port at which passengers  
15          on that voyage embark, includes each port at which  
16          the vessel calls before the last port at which pas-  
17          sengers on that voyage disembark, and ends at that  
18          last port of disembarkation. For purposes of this  
19          paragraph, the term “embark” and “disembark”  
20          have the meaning given those terms in section  
21          4.80a(a)(4) of title 19, Code of Federal Regulations  
22          (as such section is in effect on the date of enactment  
23          of this Act).

24          (3) OPERATOR.—The term “operator” means  
25          the owner, operator, or charterer.

1           (4) SECRETARY.—The term “Secretary” means  
2       the Secretary of Transportation.

3           (5) UNITED STATES SHIPYARD.—The term  
4       “United States shipyard” means a shipyard located  
5       in the United States.

6           (6) UNITED STATES.—The term “United  
7       States” has the meaning given that term in section  
8       2101(44) of title 46, United States Code.

9       **TITLE I—OPERATIONS UNDER**  
10       **CERTIFICATE OF DOCU-**  
11       **MENTATION**

12       **SEC. 101. DOMESTIC CRUISE VESSEL.**

13       (a) IN GENERAL.—Notwithstanding the provisions of  
14       section 8 of the Act of June 19, 1886 (46 U.S.C. App.  
15       289), section 27 of the Act of June 5, 1920, commonly  
16       known as the Jones Act, (46 U.S.C. App. 883), section  
17       27A of that Act, (46 U.S.C. App. 883-1), and section  
18       12106 of title 46, United States Code, the Secretary shall  
19       issue a certificate of documentation with a temporary  
20       coastwise endorsement for an eligible cruise vessel not  
21       built in the United States to operate in domestic  
22       itineraries in the transportation of passengers in the coast-  
23       wise trade between ports in the United States if the vessel  
24       meets the requirements of this title.

1 (b) TERMINATION OF AUTHORITY.—The authority of  
2 the Secretary to issue a certificate of documentation under  
3 subsection (a) begins on the day after the date of enact-  
4 ment of this Act and terminates on the day that is 24  
5 months after that date.

6 (c) APPLICATION ONLY REQUIRED.—Notwith-  
7 standing subsection (b), the Secretary may issue a certifi-  
8 cate of documentation under subsection (a) more than 24  
9 months after the date of enactment of this Act if—

10 (1) the Secretary received the application for  
11 the certificate of documentation before the end of  
12 that 24-month period; and

13 (2) the vessel otherwise meets the requirements  
14 of this title.

15 (d) RIGHTS UNDER APPLICATION NOT  
16 TRANSFERRABLE.—The right to receive a certification of  
17 documentation pursuant to an application described in  
18 subsection (c) may not be transferred by the applicant to  
19 any other person. For purposes of this subsection, the  
20 transfer of that right to a successor in interest to the ap-  
21 plicant in connection with the reorganization, restruc-  
22 turing, acquisition, or sale of the applicant's business shall  
23 not be considered another person.

1   **SEC. 102. REPAIRS REQUIREMENT.**

2           (a) IN GENERAL.—The Secretary may not issue a  
3 certificate of documentation under section 101(a) for an  
4 eligible cruise vessel unless the operator establishes to the  
5 satisfaction of the Secretary that—

6           (1) any repair, maintenance, alteration, or other  
7 preparation of the vessel for operation under a cer-  
8 tificate of documentation issued under section  
9 101(a) have been, or will be, performed in a United  
10 States shipyard; and

11          (2) any repair, maintenance, or alteration of the  
12 vessel after a certificate of documentation is issued  
13 under that section will be performed in a United  
14 States shipyard.

15          (b) WAIVER.—The Secretary may waive the require-  
16 ments of subsection (a) if the Secretary finds that the re-  
17 pair, maintenance, alterations, or other preparation serv-  
18 ices are not available in the United States or if an emer-  
19 gency dictates that the vessel proceed to a foreign port.

20   **SEC. 103. CONSTRUCTION REQUIREMENT.**

21          (a) CONSTRUCTION CONTRACT REQUIRED.—

22           (1) IN GENERAL.—Except as provided in para-  
23 graph (2), a vessel for which a certificate of docu-  
24 mentation has been issued under section 101(a) may  
25 not commence operations in the coastwise trade until  
26 the operator of that vessel executes a contract with

1       one or more United States shipyards for the con-  
2       struction of a total of 2 or more cruise vessels with  
3       a total combined berth or stateroom capacity equal  
4       to at least the total combined berth or stateroom ca-  
5       pacity of that vessel. If certificates of documentation  
6       are issued under section 101(a) for more than 1 ves-  
7       sel for an operator, the construction contract re-  
8       quired by the preceding sentence shall provide for  
9       the construction of 1 more vessel than the number  
10      of vessels for which certificates of documentation are  
11      issued with a total combined berth or stateroom ca-  
12      pacity equal to at least the total combined berth or  
13      stateroom capacity of the vessels for which the cer-  
14      tificates of documentation are issued.

15           (2) DEMONSTRATION OF CAPABILITY RE-  
16      QUIRED.—For purposes of this subsection, a con-  
17      struction contract for which financing is not pro-  
18      vided under title XI of the Merchant Marine Act,  
19      1936 (46 U.S.C. App. 1101 et seq.) shall not be rec-  
20      ognized as meeting the requirements of paragraph  
21      (1) unless both the operator and the shipyard are  
22      capable of completing the contract. For purposes of  
23      this paragraph—

24                   (A) an operator shall be considered to be  
25                   capable of completing such a contract if the op-

1 erator meets the standards set forth in sections  
2 298.12, 298.13, and 298.14 of title 46, Code of  
3 Federal Regulations; and

4 (B) a shipyard shall be considered to be  
5 capable of completing such a contract if the  
6 shipyard meets the standards set forth in sec-  
7 tion 298.32(a) of that title.

8 (b) MINIMUM SIZE REQUIREMENT.—For purposes of  
9 this section, a contract for the construction of a vessel  
10 shall be disregarded if that vessel—

11 (1) will be less than 20,000 gross registered  
12 tons; or

13 (2) will have fewer than 800 passenger berths.

14 (c) CONTRACT TERMS.—

15 (1) IN GENERAL.—The contract required by  
16 subsection (a) shall provide for delivery of the first  
17 such vessel not later than 60 months after the date  
18 on which operations of the vessel for which the cer-  
19 tificate of documentation was issued commence, and  
20 shall contain any other provisions required by the  
21 Secretary for purposes of this subsection. If the con-  
22 tract provides for the construction of more than 1  
23 vessel, it shall provide for delivery of each vessel sub-  
24 sequent to the first not later than 24 months after  
25 delivery of the immediately preceding vessel.



1           (2) EXTENSION OF TIME PERIODS FOR IMPOS-  
2           SIBILITY OF PERFORMANCE.—If the commencement  
3           of construction or the completion of construction is  
4           prevented or delayed by circumstances that would be  
5           recognized as providing a defense of impossibility-of-  
6           performance by the shipyard under applicable con-  
7           tract law, each time period in this Act related to de-  
8           livery of a vessel by that shipyard shall be extended  
9           for whatever period of time the circumstance on  
10          which the defense is predicated continues to exist.

11          (d) EXPIRATION OF COASTWISE ENDORSEMENT.—  
12          The coastwise endorsement for an eligible cruise vessel  
13          under section 101(a) shall expire 24 months after the de-  
14          livery date for the replacement vessel or vessels for that  
15          eligible cruise vessel. For purposes of this subsection, the  
16          term “replacement vessel or vessels” means 1 or more ves-  
17          sels the operator of the eligible cruise vessel is obligated  
18          to construct in the United States under the contract de-  
19          scribed in subsection (a) with respect to the eligible cruise  
20          vessel that have at least the same number of passenger  
21          berths as the eligible cruise vessel, or they, replace.

22          (e) REFLAGGING UNDER FOREIGN REGISTRY.—Not-  
23          withstanding section 9(c) of the Shipping Act, 1916 (46  
24          U.S.C. App. 808), the operator of an eligible cruise vessel  
25          issued a certificate of documentation with a temporary

1 coastwise endorsement under section 101(a), or a cruise  
2 vessel constructed under a contract described in subsection  
3 (a) of this section, may place that vessel under foreign  
4 registry.

5 **SEC. 104. CERTAIN OPERATIONS PROHIBITED.**

6 Neither an eligible cruise vessel operating in domestic  
7 itineraries under a certificate of documentation issued  
8 under section 101(a) nor a vessel constructed under a con-  
9 tract described in section 103(a) may—

10 (1) operate as a ferry;

11 (2) regularly carry for hire both passengers and  
12 vehicles or other cargo; or

13 (3) operate between or among the islands of  
14 Hawaii.

15 **SEC. 105. PRIORITIES WITHIN DOMESTIC MARKETS.**

16 (a) NOTIFICATION OF SECRETARY.—

17 (1) NEW VESSELS.—Any person eligible under  
18 section 12102 of title 46, United States Code, to  
19 document a vessel under chapter 121 of that title  
20 that enters into a contract with a United States  
21 shipyard for the construction of a cruise vessel  
22 that—

23 (A) will be at least 20,000 gross registered  
24 tons,

1 (B) will have no fewer than 800 passenger  
2 berths, and

3 (C) is otherwise eligible for a certificate of  
4 documentation and a coastwise trade endorse-  
5 ment,

6 shall notify the Secretary, at such time and in such  
7 manner and form as the Secretary may require, of  
8 the construction of that vessel not less than 2 full  
9 calendar years before the earliest date on which the  
10 vessel is intended to commence operations.

11 (2) RECONSTRUCTION.—The notification re-  
12 quirement of paragraph (1) also applies to any such  
13 person that enters into a contract with a United  
14 States shipyard for the reconstruction of any vessel,  
15 including a vessel that has a certificate of docu-  
16 mentation under chapter 121 of title 46, United  
17 States Code, will, after reconstruction, will be that  
18 size and capacity and be eligible for such an en-  
19 dorsement.

20 (b) PRIORITY TO U.S.-BUILT VESSELS.—The Sec-  
21 retary shall give priority to any cruise vessel described in  
22 subsection (a) over any other cruise vessel of comparable  
23 operations in a comparable market under a certificate of  
24 documentation issued under section 101(a) if the Sec-  
25 retary, after notice and an opportunity for public com-

1 ment, determines that the employment in the coastwise  
2 trade of the vessel issued a certificate of documentation  
3 under section 101(a) will adversely affect the coastwise  
4 trade business of any person operating a vessel not docu-  
5 mented under section 101(a) in the coastwise trade.

6 (c) FACTORS CONSIDERED.—In determining and as-  
7 signing priorities, the Secretary shall consider, among  
8 other factors determined by the Secretary to be  
9 appropriate—

10 (A) the scope of a vessel's itinerary,  
11 including—

12 (i) the ports between which it oper-  
13 ates; and

14 (ii) the duration of the cruise;

15 (B) the time frame within which the vessel  
16 will serve a particular itinerary;

17 (C) the size of the vessel; and

18 (D) the retail per diem of the vessel.

19 (d) IMPLEMENTATION.—

20 (1) INTINERARY SUBMISSION REQUIRED.—The  
21 Secretary shall require the operator of each vessel  
22 issued a certificate of documentation under section  
23 101(a) to submit, in April of each year, a proposed  
24 itinerary for that vessel for cruise itineraries for the

1 calendar year beginning 20 months after the date on  
2 which the itinerary is required to be submitted.

3 (2) PUBLICATION AND COMMENT.—

4 (A) PUBLICATION.—The Secretary shall  
5 cause any itinerary submitted under paragraph  
6 (1), and any late submission or revision sub-  
7 mitted under paragraph (3), to be published in  
8 the Federal Register.

9 (B) COMMENT PERIOD.—The Secretary  
10 shall receive and consider comments from the  
11 public on any itinerary published under sub-  
12 paragraph (A) for a period of 30 days after the  
13 date on which the itinerary is published.

14 (3) REVISIONS AND LATER SUBMISSIONS.—The  
15 Secretary shall permit late submissions and revisions  
16 of submissions after the final list of approved  
17 itineraries is published under paragraph (4)(C)(iii)  
18 and before the start date of a requested itinerary.

19 (4) SCHEDULING.—

20 (A) ACTION BY SECRETARY.—Within 30  
21 days after the close of the comment period on  
22 an itinerary published under paragraph (2)(A),  
23 the Secretary shall—

1 (i) review the itineraries submitted to  
2 the Secretary for compliance with the pri-  
3 orities established by this section;

4 (ii) advise affected cruise vessel opera-  
5 tors of any specific itinerary that is not  
6 available and the reason it is not available;  
7 and

8 (iii) publish a proposed list of ap-  
9 proved itineraries.

10 (B) OPERATORS' APPEALS.—The operator  
11 of any eligible cruise vessel may appeal the Sec-  
12 retary's decision under subparagraph (A)(ii)  
13 within 30 days after the Secretary advises the  
14 operator of the decision.

15 (C) RESOLUTION OF CONFLICTS.—As soon  
16 as practicable after the end of the 30-day pe-  
17 riod described in subparagraph (B), the Sec-  
18 retary shall—

19 (i) resolve any appeals and consider  
20 new itinerary proposals;

21 (ii) advise cruise vessel operators who  
22 responded under subparagraph (B) of the  
23 Secretary's decision with respect to the ap-  
24 peal or the new itinerary proposal; and

1 (iii) publish a final list of approved  
2 itineraries.

3 **SEC. 106. REPORT.**

4 The Secretary shall issue an annual report on the  
5 number of vessels operating under certificate of  
6 documentations granted under section 101(a), and on the  
7 progress of construction on vessels to replace those vessels  
8 under section 103.

9 **SEC. 107. ENFORCEMENT.**

10 (a) BREACH OF CONSTRUCTION CONTRACT BY OP-  
11 ERATOR.—The Secretary shall revoke a temporary coast-  
12 wise endorsement issued under section 101(a)(2) for a ves-  
13 sel if the operator of that vessel commits a serious breach  
14 of the construction contract required by section 103(a).  
15 The revocation shall take effect at the conclusion of the  
16 last voyage on the last cruise itinerary approved by the  
17 Secretary before the Secretary made the determination to  
18 revoke the endorsement.

19 (b) BREACH OF CONSTRUCTION CONTRACT BY SHIP-  
20 YARD.—

21 (1) IN GENERAL.—If a shipyard commits a se-  
22 rious breach of a construction contract required by  
23 section 103(a) with an operator of a vessel for which  
24 a certificate of documentation granted under section  
25 101(a)—

1 (A) the operator shall notify the Secretary  
2 immediately of the breach; and

3 (B) the operator may continue to operate  
4 that vessel as if the contract were in effect for  
5 a period of 24 months after notification of the  
6 Secretary on the condition that the operator  
7 will make good faith efforts during that 24-  
8 month period to execute a contract with a  
9 United States shipyard for the construction of  
10 the vessels that were to have been constructed  
11 under that contract.

12 (2) GOOD FAITH EFFORT REQUIRED.—If the  
13 Secretary determines at any time during that 24-  
14 month period that the operator has ceased to make  
15 good faith efforts to execute such a contract, then  
16 the Secretary shall immediately terminate the opera-  
17 tor's authority to continue operations under this  
18 paragraph.

19 (c) SUBSTANTIAL BREACHES ONLY.—For purposes  
20 of subsections (a) and (b), the term “serious breach of  
21 contract” means a breach of contract for which an appro-  
22 priate remedy under section 2-703 or 2-711 of the Uni-  
23 form Commercial Code, as promulgated by the National  
24 Conference of Commissioners on Uniform State Law, is  
25 cancellation by the seller or buyer, respectively.



1     **TITLE II—OTHER PROVISIONS**

2     **SEC. 201. APPLICATION WITH JONES ACT AND OTHER ACTS.**

3         (a) IN GENERAL.—Nothing in this Act affects or oth-  
4     erwise modifies the authority contained in—

5             (1) Public Law 87-77 (46 U.S.C. App. 289b)  
6     authorizing the transportation of passengers and  
7     merchandise in Canadian vessels between ports in  
8     Alaska and the United States; or

9             (2) Public Law 98-563 (46 U.S.C. App. 289c)  
10    permitting the transportation of passengers between  
11    Puerto Rico and other United States ports.

12            (3) Section 27A of the Act of the Merchant Ma-  
13    rine Act, 1920 (46 U.S.C. App. 883-1).

14            (4) Section 8109 of the Department of Defense  
15    Appropriations Act, 1998.

16         (b) JONES ACT.—Except as in section 101(a), noth-  
17    ing in this Act affects or modifies the Merchant Marine  
18    Act, 1920 (46 U.S.C. App. 861 et seq.).

19     **SEC. 202. GLACIER BAY AND OTHER NATIONAL PARK SERV-**  
20             **ICE AREA PERMITS.**

21         (a) IN GENERAL.—The Secretary of the Interior,  
22    after consultation with the Secretary of Transportation,  
23    shall issue new or otherwise available permits to United  
24    States-flag vessels carrying passengers for hire to enter  
25    Glacier Bay or any other area within the jurisdiction of

1 the National Park Service. Any such permit shall not af-  
2 fect the rights of any person that, on the date of enact-  
3 ment of this Act, holds a valid permit to enter Glacier  
4 Bay or such other area.

5 (b) NEW PERMITS NOT AUTHORIZED.—Subsection  
6 (a) does not authorize the Secretary of the Interior to  
7 issue new permits, but, if new permits are authorized  
8 under any other provision of law, they shall be awarded  
9 in accordance with subsection (a).

○